

Appl. No. 10/675,283
Atty. Docket No. CM2653CL
Amdt. dated 03/03/2006
Reply to Office Action of 12/06/2005
Customer No. 27752

REMARKS

Claim Status

Claims 1 - 18 are pending in the present application. Claims 9 and 15 are objected to as being dependent upon rejected base claims. No additional claims fee is believed to be due.

Rejection Under 35 USC §103(a) Over Coles in view of Brandt

Claims 1-8, 10-14 and 16-18 stand rejected under 35 U.S.C. § 103 (a) as being obvious over Coles, *et al* (U.S. Patent Number 6,613,030 B1) in view of Brandt, *et al* (U.S. 006613030B1). It is well-settled law that a:

[D]etermination of obviousness can not be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention. There must be a teaching or suggestion within the prior art, or within the general knowledge of a person of ordinary skill in the field of the invention, to look to particular sources of information, to select particular elements, and to combine them in the way they were combined by the inventor.

ATD Corp. v. Lydall, Inc., 159 F.3d 534, 48 USPQ2d 1161 (Fed. Cir. 1998)

Notwithstanding the law, Applicants assert *infra* that the Office has engaged in the selective culling of components from Coles and combined them with elements of Brandt to arrive at the claimed invention. Applicants further assert that the Office has done so without providing any evidence of a teaching or suggestion to combine the two references.

1. The Office has engaged in the selective culling of components from Coles.

Independent claims 1 and 14 require *inter alia* that the hydrogel disclosed therein comprise a cross-linked hydrophilic polymer comprising:

- (a) at least 50 mole percent of at least one weak-acid monomer unit having a pKa above 3;
- (b) said weak-acid monomer unit being at least 50 mole percent in their acidic form; and
- (c) said hydrophilic polymer further comprising less than 30 mole percent of all monomer units in salt form.

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The Office states that "...Coles et al **teach** additional monomers to be acrylic acid or salt or ester thereof (Col. 11, line 41-42)." *Emphasis in original.* There is an implication in the Office Action that this teaching is equivalent to teaching the use of weak-acid monomers in their acidic and neutral/salt forms. *See page 3, last paragraph of the Office Action.* Applicants assert that the Office selectively culled the use of acrylic acid monomers from Coles and presumed that this was equivalent to teaching the elements in independent claims 1 and 14, which disclose a polymer comprising "...at least one weak-acid monomer unit having a pKa above 3." For one of skill in the art to take this teaching from Coles, he or she would be required to engage in the following series of suppositions based upon the disclosure in Coles, without a teaching or suggestion to do so.

Coles relates to disposable absorbent articles comprising an adhesive, which in preferred embodiments comprise first and second monomers that are acrylate based and present in the adhesive from 1 to 60 weight % and from 1 to 50 weight %, respectively. *See col. 9, lines 16-21.* The adhesive composition preferably comprises up to 10 weight percent of one or more additional monomers. *See col. 11, lines 31-32.* The additional monomers may be non-ionic, anionic or cationic. *See col. 11, lines 26-30.* A preferred non-ionic monomer is an N-substituted acrylamide. *See col. 11, lines 33-36.* A preferred cationic monomer is a quaternary ammonium salt. *See col. 11, lines 37-40.* A preferred anionic monomer is an acrylate based monomer such as acrylic acid, or a salt, or an ester thereof. *See col. 11, lines 41-42.* Thus, the Office implies that one of skill in the art would learn the use of a weak acid monomer unit having a pKa above 3 in the presently claimed polymeric adhesive based on the fact that 10 weight % or less of the Coles adhesive *may or may not* comprise an additional monomer, and one of those additional polymers *may or may not* comprise an anionic monomer, and that anionic monomer *may or may not* be acrylic acid, or a salt thereof. Applicants assert that this is clear evidence of the selective culling of Coles to arrive at one of the elements of the present invention.

2. The Office has not provided any evidence of a teaching or suggestion to combine Coles and Brandt to arrive at the present invention.

Coles relates to "Disposable Absorbent Articles with Improved Attachment to the Skin." *See title.* The polymeric adhesive disclosed therein is "...particularly useful to (sp) absorbent articles for absorption of body liquids which naturally

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emanate from a body without a wound," such as vaginal discharges, menses, and/or urine. *See col. 1, lines 17-21 and col. 16, lines 49-54.* The adhesive may be used "[f]or example to attach sanitary napkins or pantliners in the genital region." *See col. 1, lines 17-21.* Since the adhesive may be utilized in sensitive areas of the body, the adhesive is formulated to provide for good adhesion between the disposable article and the skin and for painless and easy removal. Thus "...specific adhesive characteristics need to be preferably satisfied in order to achieve the desired performance objectives, in particular to secure initial attachment, secure attachment during use and painless removal after wear. The characteristics which have been considered in this context are the elastic modulus describing the elastic behaviour of the material and the viscous modulus which describes the viscous behaviour of the adhesive material." *See col. 3, lines 11-21.* In addition, the adhesives desirably maintain their adhesive characteristics. To wit, the adhesives "...exhibit[s] the ability to adhere to skin upon reapplication, particularly multiple reapplication for example when the article is removed for urination purposes." *See col. 2, lines 42-47.*

Brandt, on the other hand does not disclose polymeric adhesives. But rather, Brandt relates to absorbent gelling materials, i.e., "Hydrogel-forming Polymer Compositions for Use in Absorbent Structures." *See title.* The polymers may be used as "...absorbents in absorbent structures such as diapers, sanitary liners and the like." *See col. 1, lines 12 -16.* The polymers are designed such that upon exposure to fluids, they swell and form hydrogels with relatively high gel volume, i.e., a capacity to absorb the fluids with which they come into contact. *See col. 7, lines 57-59.*

Applicants assert that there is no teaching or suggestion in either Coles or Brandt to combine the two references. Coles teaches a polymeric adhesive that may be used to apply and securely hold absorbent articles to areas of the body to collect body exudates. Assuming *arguendo* that it would be possible to formulate a Coles adhesive with the swelling characteristics of the Brandt polymers, one of ordinary skill in the art would be led away from doing so since it would defeat the purpose of applying an absorbent article to the body if it is applied with an adhesive that would also soak up body exudates and potentially lose its good adhesive characteristics. In fact, in the present disclosure recognizes this as is evidenced by the disclosed requirement that:

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the level of monomers units in salt form in the hydrogel herein should not exceed 30 mole%, preferably 20 mole% of all monomer units in the polymer. The level of monomer units in salt form directly impacts the rate at which the hydrogel absorbs physiological fluid such as urine, and thus the hydrogels of the present invention have been found to exhibit a saline absorption rate of less than $2.5 \times 10^{-3} \text{ g/cm}^2 / \text{sec}^{0.5}$...Without being bound by theory, it is believed that the disassociation of the counterions of monomer units in salt form from the polymer decreases the osmotic driving force for hydrogel swelling and thus the driving force for absorption of physiological fluids such as urine. This decreases the rate for absorption of these fluids. By reducing the rate of absorption for fluids in contact with the hydrogel, the quantity of absorbed fluid is decreased, thus reducing the degree to which exposure to physiological fluids impacts adhesion and cohesion properties.

See page 3, lines 22-34.

In conclusion, Applicants assert that there is no teaching or suggestion to combine Coles and Brandt to arrive at the present invention in either of the references, and that the Office has not provided evidence to the contrary. Moreover, Applicants assert that Coles actually teaches away from incorporating the disclosure of Brandt to arrive at the present invention. On these bases, Applicants respectfully request withdrawal of the § 103(a) rejections of claims 1 and 14, and the balance of the claims, which depend (directly or indirectly) therefrom. In addition, Applicants respectfully request withdrawal of the objections to claims 9 and 15 as being dependent upon rejected base claims, i.e., claims 1 and 14, respectively.

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Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. § 103(a) to claims 1-8, 10-14 and 16-18, as well as the objections to claims 9 and 15. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of claims 1-18 is respectfully requested.

Respectfully submitted,

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By 

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